Privacy Commissioner
Te Mana Matapono Matatapu

Privacy Commissioner's submission to the Social Services Committee on the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill

Executive summary

1. The Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill ("the Bill") is an omnibus Bill that amends the Children, Young Persons, and Their Families (CYPF) Act 1989, Criminal Procedure Act 2011, Income Tax Act 2007, Social Security Act 1964 and Vulnerable Children Act 2014.

2. My comments deal solely with the new information sharing provisions contained in clause 38 of the Bill. This clause would override the Privacy Act and has significant privacy implications for a potentially large number of New Zealanders. Clause 38 introduces a new information sharing regime for "child welfare and protection agencies." This clause would allow a very broad range of agencies to use and share information, and to be compelled to disclose information, for broadly stated purposes related to child protection. Clause 38 also states that the Minister can issue a "code of practice for information sharing."

3. I support the Bill's intent to improve the care and protection of vulnerable children and to clarify agencies' ability to share information where necessary to do so. However, the information sharing provisions contained in clause 38 have been developed without adequate consultation, are complex and fragmented, and will be harder to understand than the current legislative regime. My view is that as currently drafted the information sharing provisions in the Bill will not deliver the intent of improving information sharing, and may make things worse for some of the most vulnerable.

4. The information sharing regime contained in clause 38 is neither clear nor workable. In this submission I set out an alternative approach for the Committee's consideration. My view is that agencies' information sharing needs can be met through a new enabling information sharing provision, combined with immunity for information sharing in good faith, and other existing legislative provisions that facilitate information sharing.

5. I do not support the proposed extension of section 66 of the CYPF Act to allow care and protection co-ordinators or constables to compulsorily acquire information from "every agency" (section 66(1) inserted by clause 38). I am also opposed to the introduction of compulsory information sharing (section 66F inserted by clause 38). These provisions are unnecessary and may be harmful to the trust between professionals, and between professionals and clients, that is essential to effective information sharing.

6. I urge the Committee to question officials very closely as to the analysis and risk assessment that has been done to determine whether these provisions might put some children at greater risk of harm by deterring parents and carers from seeking help and support.

7. I recommend that the Committee modify the Bill as follows:

   a. include a clear and limited definition of "child welfare and protection agencies" in clause 4;

   b. modify clause 38 to:

      i. delete section 66, 66A and 66B and instead carry over the existing section 66 in the CYPF Act;

      ii. amend section 66C to read:

      A child welfare and protection agency or an independent person that holds information relating to a child or young person may:

      (a) use that information for the purposes of –

      (i) making or contributing to an assessment of risk or need;

      (ii) making or contributing to a decision or plan;

      (iii) executing a decision or plan; or

      (iv) preventing a child from being subject to harm;

      (b) disclose that information to another child welfare and protection agency or an independent person if the supplier of the information reasonably believes that disclosing the information will assist the agency or independent person receiving the information to carry out any of the purposes described in paragraph (a);

      iii. provide for immunity from any consequences for the use or disclosure of information in good faith under the enabling provision above; and

      iv. delete sections 66D – 66H and 66J – 66N as they are unnecessary, confusing and potentially harmful.

The information sharing regime would intrude into the privacy of a potentially large number of New Zealanders

8. This Bill is part of a larger package of changes to the way the Government intervenes in the lives of at risk children and their families. The Regulatory Impact Statement describes how the current legal settings focus on "the most serious end of the risk spectrum", and that change is needed to allow the State to "intervene much earlier" and to focus on "prevention, remediation and addressing children's long-term needs, as well as addressing immediate threats."[1]

9. I have no argument with the goal of the reforms. However, the information sharing provisions in the Bill must be considered in light of the Government's intention to intervene earlier in the lives of children and their families. This change is likely to mean that a greater number of people will have some involvement with the new Ministry for Vulnerable Children Oranga Tamariki (MVCOT).

10. The intrusive nature of the information sharing provisions, including compulsory information sharing, is out of keeping with the policy intent to lower the threshold for State involvement in people's lives. The most invasive powers should be reserved for the most serious situations. As discussed below, my view is that agencies' information sharing needs in the context of reducing harm to children can be met through a combination of existing legislative settings and more straightforward enabling information sharing provision.

The information sharing provisions in the Bill will not achieve their intent

A lack of consultation means the information sharing regime may be unworkable in practice

11. This Bill has been developed without adequate consultation with the children, families and their advocates whose information will be shared or with those professionals who will be required to share information, such as doctors, midwives, teachers, Women's Refuge, counsellors and others. The Regulatory Impact Statement that relates to the information sharing provisions in the Bill, dated September 2017, states that "there has been no engagement with non-governmental agencies and professional bodies impacted by the reforms."[2]

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[1] Paragraph 36, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

[2] Bullet point 3, page 3, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

12. The information sharing provisions contained in this Bill have also been developed in the absence of the operating model for the MVCOT. Information available on the Ministry of Social Development's website states that the development of the operating model for MVCOT is being carried out over the coming four years.[3] While an iterative approach to service design may be appropriate, without clear information about how MVCOT will operate it is it difficult to assess whether the proposed legislation is proportionate and whether it contains appropriate safeguards.

13. Developing significant new information sharing provisions in isolation from MVCOT's operating model and without adequate consultation are serious deficits in the process for producing a Bill. I am very concerned that the resulting information sharing provisions may be unworkable in practice and have negative unintended consequences.

14. I **recommend** that the Committee seek clear evidence from officials that the information sharing provisions are supported by those who will be subject to and affected by them and that the new information sharing regime will not cause harm. The Regulatory Impact Statement states that the planned evaluation activity for the new regime will "include specific lines of inquiry about the impact of the new information sharing framework, including whether the framework has had any unintended adverse impacts, such as materially increasing the disengagement of vulnerable children and their families from accessing and using public services."[4] Given the potential for these "unintended adverse impacts" to cause real harm to people, it is unacceptable that answering this question should wait until after the legislation is in place and harm has occurred.

The information sharing provisions in the Bill are incoherent and harder to understand than the current legislation

15. The information sharing provisions in clause 38 are incoherent and will increase rather than reduce uncertainty. The new information sharing regime for "child welfare and protection agencies" has the following core components (the following sections referred to are all inserted by clause 38):

    a. Section 66 expands the existing power of care and protection co-ordinators to require public sector agencies to provide them with information about children or young people to enable them to carry out care and protection functions, to "every agency (within the meaning of section 2(1) of the Privacy Act 1993, which includes a person)". The effect of this is that social workers will be able to compel almost anyone in New Zealand to give them information about children or young people and their families.

[3] http://www.msd.govt.nz/about-msd-and-our-work/work-programmes/investing-in-children/service-and-practice-model.html (accessed on 15 February 2017).

[4] Paragraph 80, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

b. Sections 66A states that any information collected under the authority of section 66 can be on-shared with other child welfare and protection agencies for a broad range of purposes, unless it was provided in breach of a professional duty of confidence (as per section 66B).

c. Section 66C creates a new enabling information sharing provision permitting "child welfare and protection agencies" and "independent persons" to use and disclose information for a range of broadly stated purposes related to child protection.

d. Sections 66E and 66F require that when asked for information by another agency, the agency receiving the request must provide the information unless one of the withholding grounds in section 66G apply.

e. Section 66I requires that, before disclosing information under any of sections 66A to 66F, the discloser must, unless it is "impracticable for any reason", seek and consider the views of the child or young person concerned.

16. These provisions are complex and fragmented, and will be harder to understand than the current legislative regime. For example, there are different grounds for refusing to supply information depending on the section under which the information is requested. If a counsellor receives a request for information from a social worker under section 66E, they can refuse to provide it if they believe that disclosing the information will, for example, increase the risk of harm (section 66G(b)(i)), or prejudice the conduct of proceedings before any court or tribunal (section 66G(b)(iii)). However, if the same request is made under section 66, there are no grounds for refusing the request – even if the counsellor has reasonable grounds to believe that disclosure is not in the child's best interests.

17. Section 66G(v) allows agencies to refuse requests for information made under section 66E if "disclosure is not in the best interests of the child or young person". However, this withholding ground does not apply to requests made under section 66. I note that this is inconsistent with the recent report of the United Nations Committee on the Rights of the Child, which recommended that the New Zealand Government ensure that "any legislation enabling the collection, storage and sharing of personal information about children and their families include an explicit requirement to take into consideration the best interests of the child."[5]

[5] United Nations Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of New Zealand* (21 October 2016), recommendation 20.

18. When requesting information, agencies will need to be very clear about what authority they are relying on, as this has significant implications for how the information can subsequently be used. For example, if a psychologist chooses to breach a duty of confidence and share information with a social worker under section 66C, the social worker can then use and further disclose that information where necessary for the purposes of that section. However, if the same information is collected from the psychologist, in breach of a professional duty of confidence, by the social worker under section 66, it is restricted from being on-shared by 66B. Information collected under section 66 cannot be used for the purposes of investigating any offence, but this does not apply to information received under section 66C(b) or 66E.

19. This creates significant practical difficulties and risks. For example, agencies will need to clearly record under what authority information was collected, and that record will need to follow the information if it is on-shared. Should agencies store different items of information separately, for example in separate files? When information is recorded in reports, how are the applicable restrictions given effect?

20. Agencies have to consider the views of the child or young person concerned before disclosing information under sections 66C or 66E (as required by section 66I), even though section 66F states they "must comply" with requests for information. This protection for individuals to have some say about who gets their information does not apply to disclosures required by section 66, unless the information collected under section 66 is being on-shared under section 66A, in which case it does.

21. This sort of complexity means the new information sharing regime may prove unworkable in practice. Having different standards and legal tests applying to information may lead to fragmentation and information not being connected or shared. The Bill as it stands fails to achieve its objective of simplifying information sharing for the vulnerable children sector.

Compulsory information sharing may have negative unintended consequences

22. The Bill introduces compulsory information sharing. I have seen no evidence that this is necessary, and am very concerned that the compulsory elements of the proposed information sharing regime will have a detrimental impact on the trust relationships essential to effective information sharing, and may deter vulnerable people from engaging with support services.

23. For example, under the proposed legislation a social worker would be able to compel information from a Family Planning clinic, such as whether a woman whose children have been identified as at risk is pregnant. My office received an enquiry about just such a situation, where a nurse at a Family Planning clinic was concerned about a social worker demanding information about whether one of her patients was pregnant, with no explanation. My office's advice was to explain that the social worker has to explain the request and the onus is on the Family Planning clinic to decide if disclosure is warranted, for example under section 22C of the Health Act, or whether an alternative approach should be taken, such as seeking the woman's consent. The nurse in this case was pleased to know that she could engage in a dialogue with the social worker, rather than simply having to comply. There was no reluctance on the nurse's part to share information if the woman or her children were at risk; just a strong desire to do what was in her best interests and respect her autonomy. The proposed compulsory information sharing regime would undermine this decision making process, reducing transparency and the need for professionals to build strong relationships.

24. I am concerned that these provisions have not been tested with the agencies that will be required to comply with them, nor with the families who will be affected by the Bill. Developing a legal framework without the support of those working in this sector may lead to negative unintended consequences. There is a risk that families who need support but are unwilling to have their information widely shared will be deterred from seeking support. For example, a woman who is distrustful of government agencies may be put off from allowing her midwife to visit her home if the midwife does not have the ability to work with the woman to address and reduce risk in the manner most suited to her situation.

25. I therefore **recommend** that sections 66E, 66F, 66G and 66H (inserted by clause 38) be removed. These provisions may lead to reduced trust between professionals and between professionals and clients, potentially resulting in worse outcomes for children.

26. I also **recommend** that the existing section 66 of the CYPF Act be carried over without amendment. The proposed extension of this power to gather information to "every agency" (new section 66 inserted by clause 38) is disproportionate, unnecessary and adds to the complexity and fragmentation of the legal framework.

Section 66D should be removed as it is misleading

27. I **recommend** section 66D (inserted by clause 38) be deleted. This section requires child welfare and protection agencies to publish information about the creation or analysis of "combined datasets". While I support the intent of creating public transparency, the Bill does not provide any legal authority for agencies to "link or analyse datasets of information and produce combined datasets". We have been unable to ascertain from officials what this provision actually means or is intended to achieve.

28. The Regulatory Impact Statement states that "two-way information exchanges, including the linking of data-sets from multiple sources, is essential" and that "multiple-agency sharing will facilitate preventative interventions predicated on a social investment approach."[6] Section 66E(b) (inserted by clause 38) states that agencies my request information about "a class of children or young persons and their families." What constitutes and "class" of children is not defined. In the context of section 66D, this provision appears designed to allow agencies to amass databases of personal information about large numbers of people. However, the Bill does not provide legal authority for agencies to undertake information matching or to use predictive risk models to make intervention decisions.

29. The assumption that the "linking and analysing" of datasets is lawful or otherwise authorised is inconsistent with dozens of statutory provisions which expressly authorise and constrain information matching regimes. The new section 66D, which requires public notification about combined data sets, is therefore misleading. The more usual model would be for such activity to be expressly defined and authorised, with controls and safeguards stated in legislation.

The definition of "child welfare or protection agency" should be made more specific

30. I **recommend** the definition of "child welfare and protection agency" be made more specific. The definition included in clause 4 of the Bill, as well as a comprehensive list of agencies, includes that a "child welfare and protection agency" means "any agency that provides regulated services (as Specified in Schedule 1 of the Vulnerable Children Act 2014)" (section 2(1)(m)) and "any organisation of class of organisation designated as a child welfare and protection agency by regulations made under section 447(ga)(i)" (section 2(1)(n)).

31. Schedule 1 of the Vulnerable Children Act contains a long list of regulated services ranging from "mentoring and counselling services", through to "school bus services" or "swimming pools". The regulation making power contained in section 447(ga)(i) would allow the Governor-General, by Order in Council, to designate "organisations or classes of organisations as child welfare and protection agencies", without restriction on what types or classes of organisations this may apply to.

32. The definition of "child welfare and protection agency" is directly relevant to the information sharing provisions inserted by clause 38. The lack of specificity in this definition means that clause 38 would allow a practically unrestricted range of agencies to receive, disclose and use highly sensitive information about children, young persons and, in some cases, their families, spouses or persons living with them. For example, is it contemplated that a social worker should be able to disclose intimate details about a family they are working with to the staff of a municipal swimming pool? The effect of clause 38 of the Bill is to allow this.

[6] Paragraphs 27 and 28, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

33. I note that concern about the breadth of the definition of "child welfare and protection agency" is also raised by officials in the agency disclosure statement that accompanies the Bill, which states that "officials concluded that the appropriate response is to offer guidance and training for all agencies rather than restrict the types of agencies to which the definition applies."[7] Given the potential breadth of the information sharing regime created by clause 38, the agencies to which the powers to share information relate should be explicitly stated in legislation.

The status of a "code of practice for information sharing" should be clarified

34. Sections 66J – 66N (inserted by clause 38) create a new ability for the Minister to issue a code of practice for information sharing. The purpose of the code would be to "provide guidance... about the application of the information sharing provisions in sections 66 to 66I and how disputes about the interpretation and application of those provisions should be resolved."

35. It is not clear whether or not the code is intended to be binding, or simply to provide "guidance". A lack of clarity about the status of the code introduces further complexity to an already overcomplicated regime.

36. If the code is intended to simply provide guidance, there is no need to include a provision allowing the Minister to issue a code in legislation. Doing so only invites confusion.

37. It is unclear if the code is intended to have the force of regulation and bind child welfare and protection agencies. If this is the intention, I **recommend** that an appropriate approval process and safeguards be included in legislation. For example, the code should be approved through Order in Council, and consultation with the Privacy Commissioner should be required before the code is finalised or amended.

38. If the policy decision is that a code of practice is required to give effect to information sharing in between child welfare and protection agencies, a mechanism for this already exists in Part 6 of the Privacy Act 1993. To date I have not been asked to issue a code in relation to the child welfare and protection sector.

39. I therefore **recommend** that the Committee delete sections 66J – 66N (inserted by clause 38) from the Bill.

I recommend an alternative approach to meet agencies' information sharing needs

40. I recognise the importance of having clear legislative authority for agencies to share information where necessary to reduce the risk of harm to children. My view is that agencies' information sharing needs can be met by the legislative provisions set out below, which I propose as an alternative to clause 38 of the Bill for the Committee's consideration.

[7] Appendix 3, http://disclosure.legislation.govt.nz/bill/government/2016/224 (accessed 27 February 2017).

Existing legislation already allows for information sharing where needed to keep children safe

41. If a child is at risk, and someone knows about it, whether they work for a social service agency or are a general member of the public, existing legislation already provides clear authority for them to tell someone so that help can be sought for that child and their family. Section 15 of the CYPF Act states that any person who believes a child is at risk may report this to a social worker or constable. Section 16 of that Act then provides immunity from any consequences for any such disclosures made in good faith. In addition, section 22C of the Health Act 1956 states that any health agency may disclose health information if required by a social worker or a care and protection co-ordinator for the purposes of carrying out their functions under the CYPF Act.
42. Where care and protection co-ordinators, social workers, or constables need information about a child or young person to determine whether they are in need of care and protection, the existing section 66 of the CYPF Act gives them a broad power to require information from "every government department, agent, or instrument of the Crown and every statutory body".
43. In cases of a serious threat, under principle 11(f) of the Privacy Act any agency can disclose information where necessary to prevent or lessen this threat.
44. The *Information Sharing Agreement for Improving Services to Vulnerable Children*[8] gives the Ministries of Social Development, Health, Education, Justice, the Police and the Children's Action Plan Directorate authority to share information about children or young persons with the Vulnerable Children's Hub. Upon receiving a notification about a child, the Hub gathers information from the other parties to the Agreement to determine the most appropriate course of action, such as referral to a Children's Team. The parties to the Agreement may share information with the Hub for the purposes of:

    a. identifying vulnerable children and their families;

    b. conducting an initial assessment of the likely needs of vulnerable children and their families;

    c. determining appropriate referrals to address the needs of vulnerable children and their families; and

    d. monitoring outcomes for vulnerable children and their families, including the sharing of information for the purpose of professional supervision of service providers.

[8] An Approved Information Sharing Agreement made under Part 9A of the Privacy Act, which came into effect in June 2015. http://childrensactionplan.govt.nz/assets/CAP-Uploads/AISA/FINAL-signed-AISA-submitted-to-Cab-Office-for-OIC-20150626.pdf (accessed on 15 February 2017).

45. The existing provisions that allow for information sharing in the Privacy Act, the CYPF Act and the Health Act, plus the more recent *Information Sharing Agreement for Improving Services to Vulnerable Children*, already ensure that government agencies, health agencies and members of the public can provide care and protection coordinators, social workers and constables with information necessary to keep children safe.

46. I acknowledge the importance of professionals working with children not feeling constrained by legislation if they are concerned about a child's wellbeing and want to discuss this with other professionals. MVCOT's information sharing needs could be met by much more minor amendments to existing legislation than proposed by this Bill.

47. For example, as identified in the problem definition section of the Regulatory Impact Statement, the existing legislative provisions that facilitate information sharing focus on information being disclosed to child protection coordinators, social workers and constables.[9] It is important that government agencies, NGOs and professionals, such as teachers and midwives, are able to work together to deliver coordinated services to children and their families.

48. My view, therefore, is that an enabling information sharing provision which makes it clear that a range of agencies can share information for the purpose of assessing risk is appropriate. This is important, for example, in situations where a number of professionals have some information that a child might be at risk, but only by combining this information does a clear picture of risk emerge.

49. However, clause 38 of the Bill goes well beyond what is required to meet agencies' information sharing needs and is disproportionate. Clause 38 may make things worse; it is confusing and introduces more uncertainty than the current legislative regime.

Recommended alternative approach

50. My view is that agencies' information sharing needs can be appropriately met through a combination of existing legislative provisions that facilitate information sharing plus a new enabling information sharing provision, including immunity for good faith disclosures, in the CYPF Act.

[9] Paragraph 26, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

51. I therefore **recommend** that clause 38 be amended as follows:

a. section 66, 66A and 66B be deleted and instead the existing section 66 in the CYPF Act[10] be carried over into the Bill;

b. section 66C be amended to read:

A child welfare and protection agency or an independent person that holds information relating to a child or young person may:

(c) use that information for the purposes of –

(v) making or contributing to an assessment of risk or need;

(vi) making or contributing to a decision or plan;

(vii) executing a decision or plan; or

(viii) preventing a child from being subject to harm;

(d) disclose that information to another child welfare and protection agency or an independent person if the supplier of the information reasonably believes that disclosing the information will assist the agency or independent person receiving the information to carry out any of the purposes described in paragraph (a);

c. the Bill provide for immunity for the use or disclosure of information in good faith under the enabling provision above (modelled on clause 16 of the Bill, which extends the existing immunity provision in section 16 of the CYPF Act to disclosures made under "this Part", rather than just section 15); and

d. sections 66D – 66H and 66J – 66N be deleted for the reasons discussed above.

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[10] ***"66 Government departments may be required to supply information***
(1) Every government department, agent, or instrument of the Crown and every statutory body shall, when required, supply to every care and protection co-ordinator, social worker, or constable such information as it has in its possession relating to any child or young person where that information is required—
(a) for the purposes of determining whether that child or young person is in need of care or protection (other than on the ground specified in section 14(1)(e)); or
(b) for the purposes of any proceedings under this Part.
(2) No information obtained pursuant to subsection (1)—
(a) shall be used for the purposes of investigating any offence:
(b) shall be admissible as evidence in any proceedings other than proceedings under this Part.
(3) Nothing in subsection (1) limits or affects the Official Information Act 1982."

52. This alternative approach would address the problems identified in the Regulatory Impact Statement, namely that "the CYPF Act only facilitates the one-way disclosure of information", "the other information disclosure powers available to Child, Youth and Family have shortcomings", and "there is no general enabling provision in the CYPF Act that authorises agencies to share information with each other."[11]

53. In developing this proposed alternative I have drawn on a Cabinet paper containing advice on a new information sharing framework for family violence agencies, approved by Cabinet in late 2016.[12] The purposes for which information may be used and disclosed, in my proposal above, are aligned with those proposed for the new Family Violence Act.[13] These purposes are more constrained and more clearly focussed on permitting information sharing for risk assessments and the actions which flow from a risk assessment than the purposes currently contained in section 66C(a) (inserted by clause 38 of the Bill).

54. It is vital that the statutory schemes for information sharing for agencies providing services related to family violence and those providing services to vulnerable children are consistent. There is significant overlap between these two groups of agencies. For example, children are present at two-thirds of all family violence incidents attended by Police.[14] Having inconsistent information sharing regimes creates the risk of errors or delays in service provision caused by confusion and unnecessary complexity for professionals and families subject to both schemes.

Recommendations if clause 38 is to proceed without amendment

55. If clause 38 is to proceed, then I make the following recommendations in addition to those above.

56. Section 66 (inserted by clause 38) requires that "every agency" must supply information if it is "required to determine whether a child or young person is in need of case or protection of assistance...". I **recommend** that the Bill make it explicit that the judgement about whether or not information is required for this purpose be made by the person receiving the request. This clarification is important to ensure that information requests are appropriately defined and not so broad as to amount to 'fishing expeditions', and that the holder is able to exercise discretion taking into account what is in the best interests of the child.

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[11] Pages 7 – 9, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed 27 February 2017).

[12] https://www.justice.govt.nz/assets/Documents/Publications/fv-reform-paper-1-context-and-supporting-integrated-responses2.pdf (accessed on 15 February 2017).

[13] The Minister of Justice has announced that a Family Violence Bill will be introduced to Parliament in the coming months. https://www.justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/safer-sooner/ (accessed on 15 February 2017).

[14] https://www.justice.govt.nz/assets/Documents/Publications/fv-reform-paper-1-context-and-supporting-integrated-responses2.pdf (accessed on 15 February 2017).

57. If the new section 66 is to remain I also **recommend** that the grounds for declining requests for information contained in section 66G also apply to section 66. The proposed section 66 is inconsistent with new sections 66E and 66F, to which the withholding grounds in section 66G apply. Section 66G states that agencies can decline requests for information, for example if disclosure would not be in the best interests of the child. These grounds for refusal do not apply to requests made under section 66. This omission implies that information can be compulsorily acquired irrespective of whether the disclosure in the child's best interests.

58. In the Regulatory Impact Statement that accompanies this Bill, the Ministry of Social Development identified that one of the safeguards for the extension of the power to compel information under section 66 was that "in practice" this power would only be exercised by MVCOT for "the specific purpose of conducting statutory investigations and responses under Part 2 of the Act."[15] If this power is to be constrained in this way, I **recommend** that this should be made explicit in the Bill.

59. If section 66E remains, I **recommend** clarifying who is meant to be captured under a "class" of children in section 66E(b). Without clarification, this provision could be interpreted inappropriately broadly. For example, it appears that an agency or an independent person could request another agency or individual to disclose all the information that the agency holds about the safety, welfare, or well-being of all Māori children or young persons and their families. This provision is disproportionate and creates the risk of inappropriately broad requests, allowing agencies to gather a huge amount of sensitive information for which they have no justified need.

Conclusion

60. Overall, my view is that this Bill complicates rather than clarifies the information sharing for child welfare and protection agencies. Given the lack of consultation on the Bill, there is a serious risk that the information sharing regime will prove unworkable in practice and may have negative unintended consequences such as deterring the most vulnerable from seeking help.

61. It is my view that it is possible to meet all agencies' information sharing needs to identify and support vulnerable children through a combination of existing legislative provisions and the revised enabling information sharing provision described above.

62. I request to speak to the Committee regarding this submission.

John Edwards
Privacy Commissioner

[15] Paragraph 45, http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/regulatory-impact-statements-children-young-persons-and-their-families-oranga-tamariki-legislation-bill.html (accessed on 1 March 2017).